Criminal Revision No. 861 of 2005

Against the judgment dated 27.05.2005 passed by the learned Additional Sessions Judge, FTC II, Jamshedpur in Criminal Appeal No. 28 of 2004 affirming the judgment and order of conviction and sentence dated 10.02.2004 passed by the learned Judicial Magistrate 1st class, Jamshedpur in G. R. No. 2193 of 1992

Devendra Pratap Singh @ Mantu Singh son of
late Birendra Singh resident of 636, Garhabasa,
PS Golmuri, Town Jamshedpur, District East Singhbhum
… … Petitioner

Versus

The State of Jharkhand … … Opposite Party

For the Petitioner : Mr. A. K. Sahani, Advocate
For the Opposite Party : Mrs. Vandana Bharti, A.P.P.

Present:
HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

06.11.2017 Heard Mr. A. K. Sahani, learned counsel for the petitioner and Mrs. Vandana Bharti, learned A.P.P. for the State.

2. This application is directed against the judgment dated 27.05.2005 passed by the learned Additional Sessions Judge, FTC II, Jamshedpur in Criminal Appeal No. 28 of 2004 whereby and whereunder the judgment and order of conviction and sentence dated 10.02.2004 passed by the learned Judicial Magistrate 1st class, Jamshedpur in G. R. No. 2193 of 1992 convicting the petitioner for the offences punishable under Sections 25(1) A and 27 (1) of the Arms Act and sentencing him to undergo R.I. for 3 years has been affirmed.

3. The prosecution story in brief is that a written report was submitted by the Chairman of the Hotel Owners' Association for the offence under Section 324/387 of I.P.C. It is alleged that the petitioner and the others were arrested and one double barrel gun was recovered from the possession of the petitioner. Investigation resulted in submission of charge-sheet and after cognizance was taken, charge was framed and trial proceeded.

4. In course of trial, 10 witnesses were examined on behalf of the prosecution. P.W. 1 – Ram Narayan Sharma was a seizure list witnesses who has been declared hostile by the prosecution. P.W. 2 – Wahid Khan was also a seizure list witness who did not support the prosecution case and thus was declared hostile. P.W. 3 – Ramakant Jha was a formal witness. P.W. 4 – Shiv Shankar Gatwari had proved the sanction order of the District Magistrate and he was also a formal witness. P.W. 5 – Ratan Kumar is the Investigating Officer who had sent the gun for testing and had received the ballistic report. This witness has stated that he had taken the statement of other witnesses, obtained the sanction report and having found the case to be true, charge-sheet had been submitted against the petitioner. P.W. 6 – Dev Shankar Satpathi and P.W. 7 – Pratap Singh had been declared hostile by the prosecution. P.W. 8 – Ram Sakal Singh was a formal witness. P.W. 9 – Sadan Kumar Srivastava is the informant of the case who was the Officer Incharge of the Sakchi Police Station. This witness on information had arrested he petitioner and on search being made from the possession of the petitioner one D.B.B.L. gun and cartridges were recovered. P.W. 10 – Nag Narayan Pandey was one of the members of the raiding party who had disclosed about the recovery of the gun.

5. It has been stated by the learned counsel for the petitioner that the basis of convicting the petitioner is on a scanty evidence. It has been stated that no independent witness has been brought forward to depose against the petitioner and out of the seizure list witnesses, P.W. 1 and P.W. 2 have been declared hostile by the prosecution. He further submits that entire conviction is based on the evidence of P.W. 5 & 9, but since the same contains discrepancy and does not prove the prosecution case, the learned trial court as also the learned appellate court should not have put much reliance on the evidence of P.W. 9 & 5. He further submits that the seized gun was never kept under a sealed cover and therefore, the tampering of the gun cannot be ruled out. It has also been stated that the Sergeant Major has also not been examined and therefore, in absence of evidence of Sergeant Major whether the arm which was recovered was in a workable condition or not was not conclusively proved. It has also been stated that the sanction order of the District Magistrate was proved

by a formal witness and such sanction order also does not have any evidenciary value. Learned counsel thus sums up by stating that there being major discrepancy in the prosecution case, the petitioner deserves acquittal.

6. Learned A.P.P. for the State on the other hand has opposed the prayer made by the petitioner.

7. It appears from the oral evidence that most of the witnesses including the seizure list witness have not supported the prosecution case and have thus been declared hostile. The prosecution rests upon the evidence of P.W. 9 who had disclosed about the arrest of the petitioner on secret information and recovery of the gun and cartridges from his possession. The I.O. has been examined as P.W. 5 who had merely obtained the ballistic report as well as the sanction report and thereafter submitted charge-sheet. The report of the expert was not properly proved as the Sergeant Major was not examined. It also appears that no independent witness had come forward to support the case of the prosecution and the so called independent witnesses who are the seizure list witnesses have not supported the seizure leading to they being declared hostile by the prosecution. The seized gun was also not kept in a sealed cover which creates a grave doubt on the ballistic report also coupled with the fact that the Sergeant Major was not examined by the prosecution.

8. The entire scenario depicted above thus suggests that the prosecution lacks a veritable evidence to prove the case against the petitioner. Such lacuna appearing in the prosecution case would lead to benefit of doubt to the petitioner. Accordingly, in view of what has been stated above, this application is allowed and the judgments dated 27.05.2005 and 10.02.2004 are hereby set aside.

9. The petitioner is discharged from the liability of his bail bond.

(Rongon Mukhopadhyay, J)

Jharkhand High Court at Ranchi
The 6th day of November, 2017
R.Shekhar/NAFR/Cp.3